



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 21 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5970 5476

Patricia Irving, Mayor
Village of Asharoken
1 Asharoken Avenue
Asharoken, New York 11768

Re: Administrative Order CWA-02-2012-3001
Village of Asharoken
SPDES Permit No. NYR20A013


Dear Mayor Irving:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the above-named facility, Village of Asharoken ("Permittee"), is in violation of the Clean Water Act (33 U.S.C. §1251 et seq) ("the Act") for National Pollutant Discharge Elimination System ("NPDES") violations as described in the findings to this Order. Enclosed are two (2) originals of this ORDER, issued pursuant to Sections 309 and 308 of the Act, which detail the findings.

Please acknowledge receipt of this ORDER on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed ORDER may subject the facility to civil/criminal penalties pursuant to Section 309 of the Act. Failure to comply with this ORDER shall also subject the facility to ineligibility for participation in work associated with Federal contracts, grants or loans.

I have included a copy of the August 17, 2011 Compliance Evaluation Inspection Report. If you have any questions regarding this Order, please contact Mr. Jerry Ciotola, NPDES Team, at (212) 637-4223.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joe DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC
Sara Dorman, NYSDEC, Region 1 HQ

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Village of Asharoken
1 Asharoken Avenue
Asharoken, NY 11768

SPDES Permit No. NYR20A013

Proceeding pursuant to Sections 308(a) and
309(a)(3) of the Clean Water Act, 33 U.S.C.
§§ 1318(a) and 1319(a)(3)

PERMITTEE

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2012-3001

The following Findings of Violation and Order for Compliance ("Order") are made and issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). This Authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

A. Legal Authority

1. Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) (2) (D) of the CWA, 33 U.S.C. § 1342(p) (2) (D), requires an NPDES permit to be issued for the discharge of storm water from a Municipal Separate Storm Sewer ("MS4") serving populations of 100,000 or more but less than 250,000.

4. Section 402(p)(3)(B), 33 U.S.C. § 1342(p)(3)(B), requires that NPDES permits for discharges from a MS4 shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers and shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
5. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 setting forth the NPDES permit requirements for storm water discharges, including the following:
 - a. 40 C.F.R. §§ 122.26(a)(1)(iv) and 122.26(d) require the operator of a discharge from a medium MS4 to apply for a jurisdiction-wide or system-wide permit;
 - b. 40 C.F.R. § 122.26(b)(7)(i) defines "medium municipal separate storm sewer system," in part, as being located in an incorporated place with a population of 100,000 or more but less than 250,000; and
 - c. 40 C.F.R. § 122.26(b)(16)(ii) defines "small municipal separate storm sewer system," in part, as not defined as "large" or "medium" municipal separate storm sewer systems;
 - d. 40 C.F.R. § 122.26(b)(3) defines "incorporated place," in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
 - e. New York State DEC automatically designated the Village of Asharoken as a regulated MS4 in January 2003 located wholly or partially within the Urbanized Area portion of listed municipalities.
6. 40 C.F.R. § 122.26(b)(8), defines an MS4 as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a Town, town, borough, county, parish, district, association, or other public body (created by State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works..."
7. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-10-002) ("Permit") on April 29, 2010. The Permit became effective on May 1, 2010 and expires on April 30, 2015. The Permit supersedes the previous SPDES permit (GP-0-08-002), which became effective on May 1, 2008 and expired on April 30, 2010, and SPDES permit (GP-02-02), which became effective on January 8, 2003 and expired on January 8, 2008. SPDES permit (GP-02-02) was administratively extended until April 15, 2008, when SPDES permit (GP-0-08-002) was issued.
8. Part V of the Permit requires that the MS4 provide information as to the development and implementation of their Storm Water Management Program, Recordkeeping, Reporting, and Certification Requirements.

9. Part VII.A.3.f. of the Permit requires the MS4 to prohibit through law, ordinance, or other regulatory mechanism, illicit discharges into the small MS4 and implement appropriate enforcement procedures and actions.
10. Part VII.A.3.g. of the Permit requires the MS4 to develop and implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4 in accordance with current assistance and guidance documents from the State and EPA.

B. Factual Background

1. The Village of Asharoken (Permittee) is a municipal corporation chartered under the laws of the State of New York, and as such, Permittee is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an "incorporated place" as defined in 40 C.F.R. § 122.26(b)(3).
2. Permittee owns/operates the MS4, located in the incorporated Village of Asharoken, Suffolk County, New York and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. The MS4 in the Village of Asharoken is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1). NYSDEC included the Village of Asharoken as a regulated MS4 through designation criteria developed by the NPDES permitting authority (NYSDEC).
4. An MS4 is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. The Village of Asharoken submitted a Notice of Intent to NYSDEC on March 9, 2003 seeking coverage under the SPDES General Permit GP-02-02. The NYSDEC issued SPDES Permit NYR20A303 for the MS4 ("the MS4 permit") under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). An MS4 General Permit was issued by NYSDEC on March 27, 2003, expired January 8, 2008, and was administratively extended until the issuance of a new general permit on May 1, 2010 under GP-0-10-002. At all relevant times, the Village of Asharoken was authorized to discharge from all portions of the MS4 owned or operated by the Village of Asharoken to waters of the United States, only in accordance with Permittee's Storm Water Management Program, specific terms and conditions of the MS4 permit, and associated Storm Water Discharge Regulations set forth in 40 C.F.R. § 122.26.
6. SPDES General Permit (GP-0-10-002) was the effective permit at the time of the inspection.
7. EPA, accompanied by NYSDEC, conducted a Compliance Evaluation Inspection ("CEI") of Permittee's MS4 on August 17, 2011.
8. The Village of Asharoken submitted their unsigned "Stormwater Management Plan ("SWMP") for 2011" to EPA on September 27, 2011 to satisfy the requirements of SPDES Permit GP-0-10-002.

C. Findings of Violation

As described in greater detail in the enclosed CEI report, at the inspection of August 17, 2011, EPA inspectors observed the following violations of the Permit GP-0-10-002 for stormwater discharges from the MS4:

1. The Permittee failed to provide an adequate program assessment, record-keeping, and proper signatory (signed) for "Stormwater Management Plan ("SWMP") for 2011" submitted to EPA dated September 27, 2011, in violation of Part V of the SPDES General Permit for Stormwater Discharges GP-0-10-002.
2. The Permittee failed to develop a detailed Illicit Discharge Detection and Elimination ("IDDE") program, in violation of Part VII.a.3.g. of the Permit as follows:
 - a. Permittee indicated it has an active Illicit Discharge Detection Program for identifying illicit discharges and connections, yet there is no formal written plan or protocol for eliminating identified illicit discharges and connections.
 - b. Permittee failed to demonstrate that it can prohibit illicit discharges through law or ordinance and implement enforcement procedures equivalent to the NYSDEC Model Local Law to Prohibit Illicit Discharges.
 - c. Permittee failed to include a program to detect and address non-stormwater discharges that includes procedures for identifying priority areas of concern for the IDDE program; a description of priority areas of concern, available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges; procedures for eliminating illicit discharges; and procedures for documenting actions, in violation of Part VII.A.3.g of the Permit.
3. The Permittee failed to document full implementation of its SWMP, a violation of Part IV of the Permit.
4. The Permittee failed to explain how it has fully investigated non-stormwater discharges into its storm drainage systems, a violation of Part VII A.3. of the Permit.
5. The Permittee failed to clearly establish an Illicit Discharge Detection and Elimination (IDDE) program in their SWMP of September 27, 2011, a violation of Part VII.3.g. of the Permit.

On the basis of the Findings cited in the Paragraphs 1-5 above, the Permittee is in violation of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318 and applicable implementing regulations.

D. Ordered Provisions

1. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), Permittee is hereby ORDERED to take the actions described below.
2. Immediately upon receipt of the original copies of this Order, a responsible official of the Village of Asharoken shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.

3. The Village of Asharoken shall prepare, implement and enforce a Stormwater Management Program in accordance with the requirement's Part IV of the NYSDEC SPDES General Permit for Stormwater Discharges from MS4 (GP-0-10-002). The Village of Asharoken shall implement the Stormwater Management Program in accordance with the following schedule:

<u>Item</u>	<u>Implement No Later Than</u>
Develop, Implement, and Enforce a Stormwater Management Program	December 31, 2011
Develop, implement and enforce a program to detect and address non-stormwater discharges that meets the requirements in Part VII.A.3 of the effective Permit including but not limited to:	January 31, 2012
Develop written procedures for identifying, locating and documenting illicit discharges;	January 31, 2012
Develop, implement, and enforce a program that ensures on-site systems designed for less than 1000 gallons per day are inspected at a minimum frequency of once/5 years as part of a self-assessment of all municipal operations addressed by SWMP to determine sources of pollutants, and submit a copy of the audit report to EPA and NYSDEC.	March 31, 2012
4. The Village of Asharoken shall continue to conduct its track down program to identify and eliminate illicit connections and other potential sources of pathogens, coordinate with Suffolk County in the assessment of onsite systems, such as residential septic systems, to the MS4 by March 31, 2012.	
5. Any document submitted by Permittee as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR § 122.22), and shall include the following certification: "I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."	
6. All information required to be submitted by this Order shall be sent in accordance with the paragraph above to the following addresses:	

Jerry Ciotola
Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

Joseph DiMura, P.E.
Director, Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

E. General Provisions

1. This order does not constitute a waiver from compliance with or a modification of the effective terms and conditions of the Act, its implementing regulations, and the MS4 General Permit, which remain in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance with the Act. Issuance of an Administrative Order shall not be deemed an election by EPA to forgo any civil or criminal actions that would seek penalties, fines or other appropriate relief under the Act.
2. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Permittee to (1) civil penalties up to \$37,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).
3. The terms of this Order shall be effective and enforceable against Permittee upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: OCTOBER 21, 2011

Signed: _____

Dore LaPosta, Director

Division of Enforcement and Compliance Assistance

**UNITED STATES
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309(a)(3) of the Clean Water Act, 33 U.S.C.
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PERMITTEE

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2012-3001

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an official of the Village of Asharoken with the title

of, _____, do hereby acknowledge the receipt of copy of the

ADMINISTRATIVE ORDER, Village of Asharoken CWA-02-2012-3001.

DATE: _____

SIGNED: _____